REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 3, 5-7, 15, and 16 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-20 are now pending in this application.

In the outstanding Office Action of August 10, 2007, the Examiner rejected claims 7 and 16 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner asserted that the phrase "said at least one channel" lacked antecedent basis. In response to the Examiner's rejection, claim 7 has been amended to depend from claim 2 and claim 16 has been amended to recite the phrase "at least one channel." Additionally, claim 15 has been amended to recite "said predetermined channel…" Applicant has made these amendments for clarification and consistency purposes only, and in making these amendments does not intend to narrow the scope of the claims in any way.

Furthermore, claims 1, 3, 5, and 6 have been amended to address formal changes for stylistic and consistency purposes. As claims 7 and 16 above, Applicant does not intend to narrow the scope of these claims in any way. Moreover, in the event that such claims are not discussed further herein, Applicant is not surrendering claim scope with regard to the Doctrine of Equivalence.

Claims 1, 2, 10, 12, 13, 15, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,308,081 (Kolmonen). Applicant traverses the rejection for the reasons set forth below.

With regard to independent claims 1 and 15, the Examiner asserted that Kolmonen teaches all of the required limitations recited therein. Applicant disagrees with the Examiner's position. In particular, Applicant submits that Kolmonen is directed solely to voice communications and coding rates, neither of which are analogous to data transmissions, data signal transmission rates, or selectable transport formats.

Kolmonen teaches a system and method for using a silence descriptor (SID) frame to carry certain information related to changes or updates to coding rates of, e.g., speech coders and decoders, where a SID frame may be transmitted when a transceiver is in a discontinuous transmission (DTX) mode. (*See, e.g.,* Abstract and column 4, lines 40-47) Although Kolmonen contemplates that frames, other than SID frames, containing control and measurement data can be used to transport the changed/updated control information, as described above, only speech coders and decoders are specifically discussed, suggesting that voice/speech are contemplated as opposed to data transmission. Moreover, it is known to those of skill in the art and described at column 1, lines 34-39 of Kolmonen that SID update data comprises generated noise that may be inserted during DTX periods to counteract uncomfortable silences during breaks in transmission. In contrast, claims 1 and 15 are explicitly directed to data transmission streams, not voice/speech communications.

Furthermore, Kolmonen is directed to changing/updating coding rates. Coding rates are known and understood by those of ordinary skill in the art to refer to the rate at which signals are coded/decoded at, for example, the speech coder and decoder described in Kolmonen. Applicant does not dispute that coding rates are some form of rate. However, the claimed transmission rates of transmitted data signals and the transport formats are simply not analogous to coding rates. As is understood by those of ordinary skill in the art, and as described at pages 3-4 of the specification for the present application, transmission rates refer to the rate at which frames, blocks, data, etc. are transmitted over communication channels, not merely the rate at which such data may be coded/decoded. Moreover, transport formats (TFs) are described as being signaled for each transport channel with a dynamic part (comprising, e.g., a transport block and block set size), a semi-static part (comprising, e.g., a transmission time interval, type of error protection, coding rate, static rate matching parameter, and cyclical redundancy code (CRC) size). Therefore, it is clear that the claimed

transport format recited in claims 1 and 15 can include coding rate, but is not analogous thereto. In other words, coding rate is an entirely different "entity"/"aspect" of communications than transport format and data transmission rates.

Additionally, as pointed out by the Examiner, Komolnen describes that speech coders/decoders can operate at differing coding rates. (*See, e.g.,* column 5, lines 5-23). However, it is again understood by those of ordinary skill in the art that such coding rates are representative, for example, of merely a range of rates within which the coder/decoder can vary. Therefore, known variances of coders/decoders, as described in Kolmonen, does not read on <u>selectable</u> transport formats as required by independent claims 1 and 15 of the present application. Likewise and contrary to the Examiner's assertions at page 3 of the outstanding Office Action, nothing in Kolmonen describes or even suggests predetermined sets of selectable combinations of selectable transport formats and predetermined rate amounts. Hence, Kolomonen cannot be interpreted to read on all of the required limitations of independent claims 1 and 15 of the present application.

With regard to dependent claims 2, 10, 12, 13, and 20, Applicant submits that Kolmonen does not teach or suggest all of the required limitations recited therein for at least the same reasons as those described above. Additionally, Applicant submits that the Examiner has mischaracterized certain limitations recited in these claims and/or mischaracterized Kolmonen. For example, claim 13 of the present application requires replacing auxiliary information transmitted using the predetermined rate amount of the predetermined channel with control information. To reject claim 13, the Examiner cited column 2, lines 62-65 of Kolmonen, which indicates that the SID frame can be any other frame containing control and measurement data. As described above, this statement in Kolmonen refers to the frame in which the changed/updated data can be contained in, but does not refer to the actual replacement of any data in the SID frame. Therefore, these claims are allowable for at least the reasons described above.

Claims 3, 4, 6-9, 11, 16, 17, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kolmonen in view of U.S. Patent Publication No. 2002/0006138 (Odenwalder). Claims 5 and 18 were rejected under 35 U.S.C. § 103(a) as being

unpatentable over Kolmonen in view of U.S. Patent Publication No. 2001/0034872
(Smallcomb). Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over
Kolmonen in view of U.S. Patent Publication No. 2002/0114291 (Moulsey et al.) Applicant
traverses the rejections for the reasons set forth below.

With regard to claims 3, 4, 6-9, 11, 16, 17, and 19, the Examiner asserted that
Kolmonen teaches all of the required limitations recited therein except for the use of transport
format combinations, setting a restriction for transport format combinations, the location of
the predetermined channel within a frame of the data transmission system, and dedicated
channels. However, the Examiner asserted that Odenwalder cures these deficiencies of
Kolmonen. Applicant disagrees. As to Kolmonen, Applicant has described in detail why the
teachings described therein cannot be interpreted to read on at least data transmission rates
and selected transport formats. As to Odenwalder, Applicant submits that the combination of
Kolmonen and Odenwalder would not result in the claimed features recited in the above
claims. At best, such a combination would merely result in the SID frames carrying
changed/updated coding rate data of Kolmonen being placed into the frame structures
described by Odenwalder. (*See, e.g.,* Abstract and Figures 3-6). In other words, Odenwalder
teaches/provides nothing with regard to providing a predetermined <u>transmission rate</u> by at
least setting an additional combination of selectable transport formats into a predetermined
set of selectable combinations of selectable transport formats as described in the claims of the
present application.

As to claims 5 and 18, the Examiner asserted that Kolmonen teaches all of the
required limitations recited therein except for adding to a data transmission stream, a new
channel. However, the Examiner asserted that Smallcomb cures this deficiency of
Kolmonen. The portion of Smallcomb which the Examiner utilized to support his position
merely indicates that critical subsets of code bits may be chosen for additional channels.
(*See, e.g.,* paragraph [0014] of Smallcomb). However, a description that certain code bits
may be assigned for additional channels has nothing to do with adding a new channel to a
data transmission stream. It is well known that communications systems employ multiple
channels to effectuate communications therein. Smallcomb, which is directed to selecting
subsets of code bits, merely teaches that such selections can be made for such multiple

channels, but does not teach or suggest adding a new channel to a data transmission scheme. Moreover, Smallcomb does not cure any of the above-described deficiencies of Kolmonen. Therefore, Applicant submits that the combination of Kolmonen and Smallcomb do not teach all of the required limitations of claims 5 and 18 of the present application.

With respect to claim 14 of the present application, the Examiner asserted that Kolmonen teaches all of the required limitations therein except for the control information being HSDPA signaling information. However, the Examiner asserted that Moulsey et al. cures this deficiency of Kolmonen. Applicant disagrees. Moulsey et al. teaches that in a UMTS HSDPA embodiments, quality information could be based on measurements of SIR on a downlink common pilot channel or dedicated channel. Applicant submits that while HSDPA is mentioned in Moulsey et al., nothing suggests that this HSDPA is the control information (which replaces the auxiliary information as required in claim 13 from which claim 14 depends). Therefore, Applicant submits that the combination of Moulsey et al. and Kolmonen do not read on the claimed limitation recited in claim 14, nor does Moulsey et al. cure the deficiencies of Kolmonen described above.

Because none of the references cited by the Examiner, either separately or in combination with each other, teach all of the required limitations of independent claims 1 and 15, Applicant submits that each of these independent claims are patentable over this prior art. Furthermore, because dependent claims 2-14 and 16-20 are each directly or indirectly dependent upon independent claims 1 and 15, Applicant submits that each of these claims are allowable for at least the same reasons as discussed above, in addition to those reasons discussed with respect to claims 3-9, 11, 13, and 16-19.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: February 11, 2008   By   /G. Peter Albert Jr./

FOLEY & LARDNER LLP   G. Peter Albert Jr.
Customer Number: 30542   Attorney for Applicant
Telephone: (858) 847-6735   Registration No. 37,268
Facsimile: (858) 792-6773